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Supreme Court of the United States

October Term, 1975

CITY OF CHARLOTTE, A MUNICIPAL CORPORATION, THE CHARLOTTE CITY COUNCIL, THE GOVERNING LEGISLATIVE BODY OF THE CITY OF CHARLOTTE, AND FRED ALEXANDER, JAMES WHITTINGTON, MILTON SHORT, JOE WITHROW, PAT LOCKE, KENNETH R. HARRIS, AND NEIL C. WILLIAMS, AS MEMBERS OF THE CHARLOTTE CITY COUNCIL AND INDIVIDUALLY,
Petitioners,

v.

LOCAL 660, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AN UNINCORPORATED LABOR ORGANIZATION, AND R. L. MIDDLETON, W. M. BRAWLEY, D. F. BLACK, M. L. KNIGHT AND R. D. MCCALL, AS OFFICERS OF LOCAL 660 AND INDIVIDUALLY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

OPINIONS BELOW

The Findings of Fact, Conclusions of Law and Order of the United States District Court for the Western District of North Carolina are reported at 381 F.Supp. 500. The opinion of the United States Court of Appeals for the Fourth Circuit is reported at 518 F.2d 83. Copies of these opinions are appended to the Petition for Writ of Certiorari filed August 16, 1975 at pp. A-3 to A-17. (The Petition will hereafter be referred to as "Pet. ....." with the appropriate page.)

JURISDICTION

The judgment of the Court of Appeals was entered June 17, 1975. The Petition was filed August 16, 1975. Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the courts below properly held that the City of Charlotte had no rational basis for refusing to withhold from employees' wages monies which the employees requested be transmitted to a labor union, while honoring such requests in favor of other entities and organizations, thereby violating the Equal Protection Clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent Constitutional amendments and statutes are set forth in the Brief for Petitioners at pp. 3-6.

STATEMENT

This action was filed on October 2, 1973, in the United States District Court for the Western District of North Carolina, by the respondents herein (hereinafter referred to as "plaintiffs"), five Charlotte firemen and Local 660, International Association of Firefighters (hereinafter referred to as "Local 660"), against petitioners, the City of Charlotte, the Charlotte City Council and its members (hereinafter referred to as the "City" or the "defendants"). The plaintiffs alleged that the City had refused to honor requests of some 300 of Charlotte's 543 firemen to withhold from their paychecks and to pay to Local 660 their union dues. Plaintiffs asserted that the City's refusal to deduct their union dues on a voluntary basis while making similar deductions for a variety of other purposes violated rights guaranteed to them by the First and Fourteenth Amendments.

The case was submitted to the District Court upon cross

motions for summary judgment, upon affidavits, and upon defendants' answers to interrogatories. This record establishes the following:

Plaintiffs are members of Local 660. The Local had 351 members as of February, 1974, of the 543 uniformed Charlotte firemen. Plaintiffs and other members of the Local began their efforts to have union dues withheld from their paychecks in 1969. (Appendix at p. 22, 24.)[1] In 1970, plaintiffs and other members of the Local submitted more than 300 authorization cards signed by individual firemen to the Charlotte City Personnel Director requesting that their dues be withheld from their payroll checks and be paid to Local 660. (A. 22, 24.) Similar requests have been made at various times since 1970.

All requests made by plaintiffs and other members of the Fire Department to have union dues withheld from their paychecks have been consistently denied. (A. 18.) With the exception of the requests for withholding made by plaintiffs, no request for withholding made by employees of the Charlotte Fire Department has been denied. (A. 17.) From time to time, defendants have refused to allow withholding of dues requested by employees of other City departments to be paid to the American Federation of State, County, and Municipal Employees, the North Carolina Labor Alliance, and the Retail, Wholesale and Department Store Union.

The defendants have no written criteria by which they decide which requests for withholding to honor and which

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[1] (The Appendix will hereafter be cited as "A.——" with the appropriate page reference.)

requests to refuse. In practice, the defendants withhold moneys from City employees to be delivered directly to various organizations and entities for the following purposes:

1. Federal Income Tax
2. State Income Tax
3. North Carolina Firemen Retirement
4. North Carolina Local Government Retirement System
5. Medical Insurance (Life of Virginia)
6. Life Insurance (Life of Virginia)
7. United States Savings Bonds
8. United Way (Mecklenburg and Union Counties)
9. Firemen Benefit Fund (Lincoln National Life)
10. Charlotte Fire Department Credit Union
11. Aetna Deferred Compensation Program
12. Charlotte Fire Department Voluntary Pledge Fund
13. City-County Tax Levy
14. State Tax Levy.

In furtherance of Local 660's objectives, plaintiffs have, on numerous occasions, discussed with private insurance companies the possibility of obtaining life insurance for the membership of the Local. Plaintiffs were advised that group policies could be obtained only through a dues check-off system. (A. 25, 58-60.) In addition, the defendants' refusal to allow plaintiffs the requested withholding hinders plaintiffs' efforts to obtain legal counsel, to petition elected representatives, to engage in various community service activities, and to join together for other associational purposes. (A. 22-26, 51-52.)

The defendants' payroll deduction procedure is computerized and the District Court found "[w]ithholding

union dues from the wages of individual firemen would be no more difficult than processing the deductions for any of the presently existing programs for which payroll deductions are made." (Pet. A-11.)

On September 5, 1975, the District Court granted plaintiffs' motion for summary judgment. The Court found:

> "The defendants' practice has been to allow check offs from employees' pay to organizations or programs as required by law or where the check off option is available to all City employees or where the check off option is available to all employees within a single employee unit such as the Fire Department. Defendants have not allowed check off options serving only single employees or programs which are not available either to all City employees or to all employees engaged in a particular section of City employment." (Pet. A-10.)

Holding that defendants' actions had hindered plaintiffs' associational rights, that the City had suggested neither a compelling state interest nor any rational basis for their actions, that defendants would not be unduly burdened by plaintiffs' requests, and that the defendants' actions were arbitrary, were without rational basis and violated the plaintiffs' Fourteenth Amendment rights, the District Court granted plaintiffs' Motion for Summary Judgment and issued the following Order:

> "So long as the defendants continue, without clearly stated and fair standards, to withhold moneys from the paychecks of City employees for other purposes, organizations and entities not specifically required by law, the defendants, their agents, successors, employees and any persons acting in concert with the defendants or at their direction are enjoined from refusing to

withhold moneys from the paychecks of the individual plaintiffs to be paid to Local 660." (Pet. A-14.)

The defendants appealed to the United States Court of Appeals for the Fourth Circuit. In an opinion filed on June 17, 1975, the Court of Appeals (Judges Russell, Field and Thomsen) affirmed the District Court order emphasizing the limited nature of the injunction:

> "Defendants may hereafter adopt reasonable, objective standards for determining which requests for withholding will be granted and which denied. If, on the basis of a rational classification made under such standards, defendants determine that such withholding requests as are involved in this case should be denied, the defendants may move to reopen the case in the district court." (Pet. A-6.)

The defendants filed a petition for writ of certiorari in this Court on August 16, 1975; certiorari was granted on October 14, 1975.

ARGUMENT

The City's Refusal To Check Off Dues As Requested By The Plaintiffs Is An Arbitrary And Irrational Infringement Of Plaintiffs' Rights Under The Equal Protection Clause Of The Fourteenth Amendment.

The City's argument proceeds from the premise "dues check off is a privilege—not a constitutionally protected right" (Brief of Petitioners, p. 11). This proposition, which originated in a celebrated case involving public employees,[2] has now been thoroughly discredited, not least in cases involving public employees.[3]

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[2] *McAuliffe* v. *New Bedford*, 155 Mass. 216, 220, 29 N.E. 517 517-518 (Holmes, J.).

[3] See, e.g., *Wieman* v. *Updegraff*, 344 U.S. 183, 191-192 (1952);

While the nature of the right affected may determine the standard for evaluating allegedly discriminatory conduct (see e.g. *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 17-39 (1973); *United States* v. *Moreno*, 413 U.S. 528, 538 (1973), the Equal Protection Clause of the Fourteenth Amendment establishes that in all events differences in governmental treatment must at least "bear some rational relationship to legitimate state purposes." (*Rodriguez*, *supra*, 411 U.S. at 40. See also, *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972).) The reason for this Constitutional requirement was expressed by Mr. Justice Jackson with characteristic clarity:

> "The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation."

Railway Express Agency v. *New York*, 336 U.S. 106, 112-113 (1949) (concurring opinion).

Garrity v. *New Jersey*, 385 U.S. 493, 499-500 (1967); *Pickering* v. *Board of Education*, 391 U.S. 563 (1968); *Perry* v. *Sinderman*, 408 U.S. 593, 597 (1972); *Keyishian* v. *Board of Regents*, 345 F.2d 236, 239 (2d Cir., 1965) (Marshall, J.), aff'd. 385 U.S. 589 (1967); *Illinois State Employees Union, Council 34, Etc.* v. *Lewis*, 473 F.2d 561, 568 (7th Cir., 1972) (Stevens, J.), cert. denied 410 U.S. 928, 943.

We now show that defendants have been unable to demonstrate that their refusal to check off union dues while withholding monies to other entities and organizations "rationally furthers a legitimate state purpose or interest." *Rodriguez, supra,* 411 U.S. at 55; it is arbitrary conduct, which the courts below properly condemned as violative of the Fourteenth Amendment.

Early in the litigation, plaintiffs sought to determine the standards used by the City with respect to withholding. In response to Interrogatory 4 (A. 14), the defendants stated:

> "4. Because of a potentially large number of organizations that might desire withholding service, the City has generally limited such withholdings to tax, retirement-insurance, limited investment situations and certain charitable contributions. Unrestricted withholding is impractical due to the volume of clerical and administrative work that such a process would demand." (A. 17.)

The first sentence simply states what the City was doing, not why.[4] When defendants attempted to state a rational basis for distinguishing the plaintiffs' request from these deductions, it failed completely. See pp. 11-14 *infra.* The argument of practicability in the second sentence is without merit. The District Court concluded that "withholding dues from wages of the firemen would be no more difficult than

[4] The City asserts that the evidence shows that dues check off had been requested by the North Carolina Fireman's Association and was denied (Brief for Petitioners, p. 32 citing A. 44). In the incident thus referred to, the Fire Chief had originally directed that a check off be granted the Association. After this directive was called to the District Court's attention by plaintiffs, the Defendants filed an affidavit stating the Association's request for check off had been denied. (A. 24-29, 44)

processing the deduction for any of the City's existing programs." (Pet. A-11.) The Court was entirely correct.

Importantly, the City makes no claim now, and made no claim below, that the administrative costs to the City would be anything more than minimal. All that is involved is a brief amount of key punch time. Instead, the City asserts that "[t]here would be a substantial expense to the City if employees could require the City to deduct and withhold from employees' pay any and all of the innumerable purposes which might arise." (A. 55.)

Plaintiffs do not seek and the District Court did not order any unlimited withholdings. The City is free to develop fair and reasonable standards to meet any possible cost problem. A rule which would permit deductions for an organization which all employees of a City department can join or for organizations having a membership of a majority of a department's employees might be an appropriate standard to be applied to all checkoff requests. Alternatively, withholding costs could be equitably spread among all its beneficiaries. Plaintiffs would be willing to meet their fair share of these expenses.

Later in the case, the defendants asserted the following in support of their actions "it is the policy of the Charlotte City Council to permit and authorize those deductions which would directly benefit all City employees, but that it is contrary to the policies of the Charlotte City Council to permit deductions which would benefit only some special group of employees" (A. 54).

The District Court correctly found on the basis of actual practice that the defendants had followed no such policy. Indeed, the facts indicate that organizations and individ-

uals have benefited from withholding even where only City employees in one department were eligible to participate (as with the Firemen's Credit Union and the Charlotte Fire Department Voluntary Pledge Fund) and where only interested employees requested a certain withholding (e.g., United States Savings Bonds, United Way, Deferred Compensation, Medical Insurance and Life Insurance).

Because the facts conflicted with the claimed standards, the District Court rejected defendants' contention that plaintiffs' request for dues checkoff had been denied for failure to meet established criteria. The Court found, from what the defendants had actually allowed, that the City's practice had been

> "to allow check offs from employees' pay to organizations or programs required by law or where the check off option is available to all employees within a single employee unit such as the Fire Department. Defendants have not allowed check off options serving only single employees or programs which are not available either to all City employees or to all employees engaged in a particular section of City employment." (Pet. A-10 to A-11).[5]

In addition to the explanations introduced into the record as alleged withholding policies, the City now offers four arguments.

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[5] Petitioners have assailed some facts determinations of the lower courts (Brief of Petitioners at pp. 30-33). We do not treat those contentions separately both because they are plainly without merit and because it is our understanding that this Court does not grant certiorari "to review evidence and discuss specific facts" *United States* v. *Johnson*, 268 U.S. 220, 227 (1925). Moreover, the City really does not contend summary judgment was improper in this case. Indeed, they renew their plea for such a ruling in their favor.

The first of these is a denial of the necessity to offer any rational basis:

> "[t]he obvious difference between dues check off for the benefit of a union and ordinary payroll deductions for employee fringe benefits, should in itself establish the rational basis for denying dues check off in a separate category."[6] (Brief for Petitioners at 23.)

Knowing this tactic must fail the City apparently maintains the requested check off can be denied (1) because it is part of collective bargaining, (2) because it is prohibited by N.C.G.S. § 95-98, and (3) because the City's position serves to weaken a labor union. Plaintiffs contend that none of the above factors meet the *Rodriguez* standard.

1. It is no justification for the present denial of a checkoff that that subject may ultimately be one for collective bargaining. Presently, collective bargaining by public employees in the State of North Carolina is merely in the womb of time. It will take, as the petitioners themselves emphasize, a revision of North Carolina law, or an Act of Congress, to bring about this result. If collective bargaining is ultimately permitted or mandated with respect to public employees in North Carolina, the statute which

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[6] This *ipse dixit* is advanced also by the *amicus curiae* Sheriff Bailey:

> "The opinion of the District Court and the opinion of the Fourth Circuit both fault the City of Charlotte for not having publicly stated legitimate reasons for distinguishing between checking off United Way contributions and checking off union dues. The reasons for distinguishing between these two are so obvious so as to require no statement, either from the City or from *amicus curiae*. They are the public policy of the City of Charlotte. They are the public policy of most municipalities and governmental units in the United States. They protect the people." (Brief for Amicus Curiae at 12)

so provides will, we may assume, afford the public employer the same privilege to, as a negotiating tactic, deny the checkoff now vouchsafed to private employers by § 8(d) of the National Labor Relations Act, see *Porter Co.* v. *NLRB,* 397 U.S. 99 (1970), and the dissenting opinion presaging *Porter* of then Judge (now Chief Justice) Burger in *United Steelworkers of America* v. *NLRB,* 390 F.2d 846 (D.C. Cir. 1967), *cert. denied,* 391 U.S. 904 (1968). Such a fundamental alteration of the respective rights and duties of the employer, the employees and the union, will present a rational basis for denying a checkoff, and its denial under those circumstances would therefore be entirely consonant with the trial court's limited injunction here.[7] Indeed, even if the District Court had not so carefully tailored its in-

[7] *Bauch* v. *City of New York,* 21 N.Y.2d 599, 289 N.Y.S.2d 951 (1968), *cert. denied* 393 U.S. 834, and *Local 858, American Federation of Teachers* v. *School District No. 1,* 314 F. Supp. 1069 (D. Colorado, 1970), cited by Petitioners (Brief for Petitioners, pp. 14-15) illustrate how the existence of a collective bargaining relationship rationally justifies withholding of the check off. In both cases the public employer checked off dues to the union which was the majority representative of the employees authorized to bargain on behalf of an entire unit, but denied the check off to a minority union which was not the statutory representative. As Judge Arraj explained in *Local 858*:

> "We are satisfied that the grant of exclusive privileges to the duly elected bargaining representative of public school teachers by the School District promotes a compelling government interest. The interests of the state above outlined in our discussion of the First Amendment claim are compelling, for labor peace and stability in an area as vital as public education are indisputably a necessity to the attainment of that goal. Inter-union strife within the schools must be minimized. Unnecessary work stoppages and the consequent impairment of the educational process cannot be tolerated without significant injury to public education." 314 F. Supp. at 1077.

junction to the present situation, such a legal change would relieve the defendants of the obligations thereunder, see *System Federation* v. *Wright,* 364 U.S. 642, 648-650 (1961) following *Pennsylvania* v. *Wheeling & B. Bridge Co.,* 18 How. 421., 15 LEd 435.

But as long as the pubic employer is exercising unilateral standardless governmental authority, it cannot escape the limitations of a higher authority—the United States Constitution—by reliance on a change of status which is at best only a possibility.

2. N.C. Gen. Stat. Section 95-98, in pertinent part, prohibits any "contract between . . . any city . . . and any labor union . . . as bargaining agent for any public employees. . . ." Contrary to the City's argument, the statute does not prohibit dues check-off as directed here. The District Court held that N.C.G.S. § 95-98 "does not apply to this case; no contracts or agreements are contemplated between defendants and Local 660" (Pet. A-13).

The Court of Appeals similarly held: "[A] state statute (N.C.G.S. § 95-98) prohibits contracts between governmental agencies or units (including cities) and labor unions as bargaining agents for public employees but that statute does not justify denying the request for withholding made by plaintiffs in this case" (Pet. A-6).

The contrary opinion of the Attorney General (A. 38-41) relied upon by defendants is devoid of any argument or reasoning consistent with its conclusion[8] and was properly

[8] The withholding agreement, if it is a contract at all, is one made by the individual employee with the City. Local 660 is, at most, a third-party beneficiary to any contract between the individual employee and the City. In such an arrangement, Local 660

rejected by the Courts below, whose views deserve the respect of this Court. "The issue presents solely a question of state law and '[this Court] ordinarily accept[s] the determination of local law by the Court of Appeals * * * and [it should] not disturb it here.' Ragan v. Merchants Transfer Co. 337 U.S. 530, 534 (1949); General Box Co. v. United States, 351 U.S. 159, 165 (1956); The Tungus v. Skovgaard, 358 U.S. 588, 596 (1959)." *C.I.R.* v. *Estate of Bosch,* 387 U.S. 456, 462 (1967).

3. As we have shown, the City has been unable to advance any rational basis for its classification whereby monies are deducted from employees' wages and sent to numerous entities and organizations but not allowed for labor unions. The City understandably does not argue that the fact that plaintiff is a labor union is itself a rational basis for the challenged classification. As the District Court stated,

> "Desire to discourage municipal labor organizations including Local 660 would of course be an impermissible reason for refusing to withhold moneys from the paychecks of the individual plaintiffs" (Pet. A-13).

The cases are unanimous in holding that the right of public employees to join a labor union (as distinguished from bargaining collectively through a union) is protected by the First Amendment.[9] And "if the constitutional conception

makes no promise, assumes no obligations, and undertakes to do nothing. Local 660 would not, under North Carolina law, be a party to any such contract. See, *Lammonds* v. *Aleo Manufacturing Co.*, 243 N.C. 749, 92 S.E. 2d 143 (1956) (employee is third party beneficiary in collective bargaining agreement); *Dixie Container Corp.* v. *Dale*, 273 N.C. 624, 160 S.E. 2d 708 (1968).

[9] *American Federation of State, County, and Municipal Employees* v. *Woodward*, 406 F.2d 137, 139 (8th Cir., 1969); *Mc-Laughlin* v. *Tilendis*, 398 F.2d 287 (7th Cir., 1968); *Lontine* v. *Van Cleave*, 483 F.2d 966 (10th Cir., 1973); *Atkins* v. *City of Charlotte*, 296 F. Supp. 1068 (W.D.N.C., 1969) (Three-Judge Court).

of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest." *United States* v. *Moreno, supra,* 413 U.S. at 534. See also, *Police Department* v. *Mosley,* 408 U.S. 92, 95 (1972).

Thus, since the City has not and cannot demonstrate a rational basis for its refusal to treat plaintiffs equally, the carefully tailored relief fashioned by the District Court clearly was appropriate.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully pray that the Order of the District Court filed on September 5, 1974, be affirmed.

Respectfully submitted,
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